

- (vi) that the Licensee's obligations to the Operator are determined having due regard to its obligations and reasonably foreseeable obligations to establish Points of Connection for others;
 - (vii) that arrangements made under this Condition are so far as circumstances allow in as similar a form as practicable notwithstanding the variety of Operators entitled to such arrangements under this Condition;
 - (viii) that commercial and confidential information of the Licensee is properly protected; and
 - (ix) that the technical evolution and numbering arrangements of the Applicable Systems are not unreasonably constrained.
- (g) that without prejudice to paragraph 13.5C the Licensee may be required to carry out any work which the agreement requires it to carry out within an appropriate period of time having regard to all the circumstances which would be reasonable for an efficient telecommunications operator who was not required to give the particular work priority over work for the Licensee's customers generally.

13.5A Where in pursuance of such an application as is referred to in paragraph 13.5 the Director determines any charge, or the means of calculating any charge, payable to the Licensee by the Operator, he shall do so in accordance with the following provisions:

13.5A.1 Where the customer for any call would reasonably be expected to be billed by the Operator in relation to the conveyance of calls of the type concerned, or where the revenue attributable to that call would reasonably be expected to be collected by the Operator from the operator of another system (other than the Applicable Systems) over which the call was conveyed, the Operator shall pay a charge to the Licensee in respect of that call.

13.5A.2 Subject to paragraphs 13.5A.5 and 13.5D and Condition 16B the Operator shall pay the Licensee charges calculated as set out in paragraph 13.5A.3, which charges will differ according to:

- (a) whether the call is a local, national or international call and, if the Director considers it appropriate in the interests of fair and effective competition, according to any Sub-Categories of any of those categories of call;
- (b) the portion or portions of the Applicable Systems by means of which the Message is conveyed; and

- (c) the time of day at which the call is made, fixed by reference to the times for peak, standard and cheap rate calls published from time to time by the Licensee.

13.5A.3 Each of the charges referred to in paragraph 13.5A.2 payable to the Licensee by the Operator in respect of the conveyance of any Message shall cover:

- (a) the Licensee's fully allocated costs of the conveyance calculated on an historic cost basis, including a full contribution to relevant overheads, calculated on the basis of information supplied by the Licensee drawn from:
 - (i) to the extent that a period in respect of which the charge is payable falls within a financial year ending on or before 31 March 1995, its audited FRBS figures for the financial year preceding that financial year; and
 - (ii) in any other case, the audited information appearing by virtue of Condition 20B.4 (b) (i) in the Licensee's Financial Statement for the relevant Business for the financial year ending on 31 March in respect of which the charge is payable (the "financial year in question");

(provided that the Director may determine whether those fully allocated costs including those relevant overheads and relevant costs of capital incurred in prior years and the current year should be wholly attributed in the current year or deferred and carried forward, in whole or in part, to be attributed in future years);

- (b) the Applicable Rate of Return applied to the relevant capital employed; and
- (c) until 7 February 1996, a contribution ("the Contribution"), assessed in accordance with paragraph 13.5A.4 below, towards the Licensee's Access Deficit.

"Access Deficit" means, in relation to any financial year, the difference between:

- (a) the Licensee's aggregate revenue by way of connection charges and periodic charges in respect of the provision, use and Ordinary Maintenance of Exchange Lines; and
- (b) the aggregate of:
 - (i) the Licensee's fully allocated costs incurred in respect of those services (including a full contribution to relevant overheads) as assessed by the Director on the basis of:

(aa) to the extent that a period for which the charge is payable falls within a financial year ending on or before 31 March 1995, the Licensee's audited FRBS figures in respect of the financial year preceding that financial year; and

(bb) in any other case, the audited information appearing by virtue of Condition 20B.4 (b) (i) in the Licensee's Financial Statement for the relevant Business for the financial year in question;

(provided that the Director may determine whether those fully allocated costs including those relevant overheads and relevant costs of capital incurred in prior years and the current year should be wholly attributed in the current year or deferred and carried forward, in whole or in part, to be attributed in future years); and

(ii) the return on capital employed in providing such services, calculated at the Applicable Rate of Return.

The Licensee's fully allocated costs as specified in the audited FRBS figures or, as appropriate, the audited information appearing by virtue of Condition 20B.4 (b) (i) in the Licensee's Financial Statement for the relevant Business for the financial year in question will be used for the purposes of calculating the Access Deficit unless:

(a) the Director, following consultation with the Licensee, has notified the Licensee that in his view a cost has been improperly allocated and should be allocated to some other service, having regard to the causality criterion where it is applicable, and has notified the Licensee of the service to which he considers the cost should be reallocated and his reasons for taking that view; and

(b) The Licensee has had a reasonable opportunity of making representations about those reasons.

13.5A.3A For the purposes of calculating the charge (or the means of calculating that charge) for a Standard Service (other than a Competitive Standard Service) in accordance with paragraph 13.5A, subject to paragraph 13.5A.3C (a) (ii), the Licensee shall submit to the Director not later than two months before the commencement of the financial year in question:

(a) in respect of that Standard Service, a forecast of the Licensee's fully allocated costs (including the relevant capital employed) of the conveyance calculated on an historic cost basis including a full contribution to relevant overheads for the financial year in question (provided that the Director may determine whether those fully allocated costs including those relevant overheads and relevant costs of capital incurred in prior years and the current year should be wholly

attributed in the current year or deferred and carried forward, in whole or in part, to be attributed in future years); and

(the "Forecast") based on:

- (i) the audited information appearing by virtue of Condition 20B.4 (b) (i) in the Licensee's Financial Statement for the relevant Business for the financial year two years immediately preceding the financial year in question;
- (ii) the audited information appearing by virtue of Condition 20B.4 (b) (i) in the Licensee's Interim Financial Statement for the relevant Business for the first six months of the financial year immediately preceding the financial year in question; and
- (iii) any other relevant information available at that time;

and, pending the determination of the Final Charge (as defined in paragraph 13.5A.3B (a)) for the financial year in question, the charge for that Standard Service shall be calculated using the Forecast (each an "Interim Charge").

13.5A.3B (a) As soon as reasonably practicable after the end of the financial year in question, the Director shall recalculate and redetermine the charge (or the means of calculating that charge) for the relevant Standard Service or the Contribution (each a "Final Charge") in accordance with paragraph 13.5A. That recalculation and redetermination shall include a provision that where the Interim Charge and the Final Charge differ, the Licensee shall offer to include in the agreement with the Operator for the provision of that Standard Service terms (that offer not to be conditional on the acceptance by that Operator of the inclusion in that agreement of any other terms and conditions whether relating to the charge (or the means of calculating that charge for that Standard Service)) which provide that:

- (i) if the Interim Charge is greater than the Final Charge, the Licensee shall pay to the Operator the amount of the difference together with interest calculated in accordance with sub-paragraph (b); and
- (ii) if the Interim Charge is less than the Final Charge, the Operator shall pay to the Licensee the amount of the difference together with interest calculated in accordance with sub-paragraph (b);

provided that:

- (aa) where the charge for that Standard Service paid by an Operator to the Licensee pending the recalculation and redetermination of the charge in accordance with this paragraph (the "Actual Charge") is less than the Interim Charge (whether as a result of the operation of Condition 24F or in circumstances where the

Director has consented to that lesser charge pursuant to Condition 16B.5), the Final Charge shall be whichever is the lower of the Actual Charge and what would have been the Final Charge but for the operation of this proviso;

- (bb) where a Contribution is payable by an Operator, any payment to be made in accordance with this paragraph shall be adjusted to take account of any reassessment of the Contribution calculated using any revised Contributions pursuant to either of Conditions 24F.10 and 24F.13 for the period the revised Contributions were paid; and
 - (cc) any payment to be made in accordance with this paragraph shall be adjusted to take account of any revision of the charge calculated using any revised charge (or the means of calculating that charge) pursuant to either of Conditions 24F.11 and 24F.14 for the period the revised charge was paid.
- (b) A recalculation and redetermination of charges as described in sub-paragraph (a) shall include a provision requiring the Licensee to offer to include in the agreement with the Operator for the provision of that Standard Service terms which provide for interest to be added to any payment to be made in accordance with sub-paragraph (a), calculated from the date on which the relevant payment was due to the date on which payment is made, both dates inclusive. The applicable annual percentage rate shall be the London Inter Bank Offered Rate plus 3/8 per cent. For the purposes of this paragraph the "London Inter Bank Offered Rate" means the rate of interest which is the rate per annum of the offered quotation for deposits of sterling for delivery on the due date for payment for a period of three months which appears on the display designated as "Page 3750" on the Telerate Service (or any other page as may replace "Page 3750" on that Service) at or about 11am London time on the due date of payment; if that rate does not appear on "Page 3750" on the Telerate Service (or any replacement page) "London Inter Bank Offered Rate" shall mean the rate quoted by National Westminster Bank PLC to leading banks in the London interbank market at or about 11 am London time on the due date of payment for the offering of sterling deposits of a comparable amount for a period of three months.
- (c) The Licensee shall, without prejudice to Condition 52, submit to the Director, in the manner and at the times as the Director specifies, any information in addition to any Forecast which it is required to submit in accordance with paragraphs 13.5A.3A and 13.5A.3C which he may reasonably require for the purposes of calculating the charge (or the means of calculating that charge) for a Standard Service (whether the Interim Charge or the Final Charge or both).
- (d) The Director shall be entitled to amend any Forecast which the Licensee is required to submit in accordance with paragraphs

13.5A.3A and 13.5A.3C in any manner which he considers to be necessary to render it a more accurate forecast of the Licensee's fully allocated costs (including the relevant capital employed) of the conveyance calculated on an historic cost basis including a full contribution to relevant overheads and the Contribution to be assessed in accordance with paragraph 13.5A.4 (provided that the Director may determine whether those fully allocated costs including those relevant overheads and relevant costs of capital incurred in prior years and the current year should be wholly attributed in the current year or deferred and carried forward, in whole or in part, to be attributed in future years).

13.5A.3C (a) Notwithstanding paragraph 13.5A.3A:

- (i) in relation to a new Standard Service (other than an Initial Standard Service and a Competitive Standard Service) the charge for which the Licensee or the Operator, as the case may be, refers to the Director for determination in accordance with this Condition, the Licensee shall in respect of that Standard Service submit to the Director, as soon as reasonably practicable after the reference of that charge for determination, a Forecast based on the information specified in paragraph 13.5A.3A (i), (ii) and (iii), the Financial Statement of the relevant Business for the financial year immediately preceding the financial year in question (if available) and the Interim Financial Statement of the relevant Business for the financial year in question (if available); and
 - (ii) for the purposes of the financial year ending 31 March 1996, the Licensee shall submit the Forecast for each Initial Standard Service to the Director not later than seven working days after the date on which this Condition comes into force based on the audited FRBS Statement for the financial year ended 31 March 1994 together with any other relevant information available at that time.
- (b) For the purposes of sub-paragraph (a) "FRBS Statement" means an accounting statement the purposes of which are to set out and fairly present the costs (including capital costs), revenue and financial position of the Licensee's relevant services including a reasonable assessment of the assets employed in and liabilities attributable to those services.

13.5A.4 The Contribution shall be assessed according to the following formulae on the basis of figures for the financial year in question. It shall (subject to the following proviso) be assessed separately in relation to each of the following categories of call, namely local, national and international calls, carried solely (within the United Kingdom) over the Applicable Systems (the category of international calls comprising both incoming and outgoing

international calls). The Contribution per minute of traffic in respect of each category will (subject to the following proviso) be:

(a) in respect of local calls:

$$\frac{A_1 \times \frac{\text{AccessDeficit}}{A_1 + A_2 + A_3 + A_4}}{2D_1}$$

(b) in respect of national calls:

$$\frac{A_2 \times \frac{\text{AccessDeficit}}{A_1 + A_2 + A_3 + A_4}}{2D_2}$$

(c) in respect of international calls:

$$\frac{A_3 \times \frac{\text{AccessDeficit}}{A_1 + A_2 + A_3 + A_4}}{D_3}$$

Where:

A_1 , A_2 , A_3 and A_4 are respectively, in respect of each such category and a fourth category (comprising calls conveyed within the United Kingdom by means of the Applicable Systems and the Systems of one or more Operator and calls used to provide other telecommunication services not comprised in A_1 , A_2 , or A_3) the profit for the financial year in question, calculated by reference to the Licensee's fully allocated costs, assessed on the basis set out in paragraph 13.5A.3 (a), after meeting the cost of capital at the Applicable Rate of Return on the capital employed;

D_1 , D_2 and D_3 are respectively, in respect of each such category (but not the fourth category) the total duration in conversation minutes of all Messages conveyed, during the financial year in question;

provided that:

- (i) without prejudice to paragraph 13.5A.2 (c), any determination of charges in pursuance of the provisions of paragraphs 13.5A.3 or 5 which cover the Contribution shall take into account the different rates according to time of day (referred to in paragraph 13.5A.2 (c)) charged by the Licensee so that the relationship between those rates is reflected as nearly as possible in the charges so determined, the times of day being those applied by the Licensee on the coming into force of this paragraph 13.5A, provided that if the Licensee changes the times of day, appropriate adjustments approved by the Director shall be made

to take account of the changes, for the purpose of this paragraph 13.5A.4;

- (ii) each of the categories of call specified in paragraphs 13.5A.4 (a), (b) and (c) may be divided by the Director into Sub-Categories for the purpose of assessing the Contribution separately in relation to each such Sub-Category on the basis of the formula for that category applied, *mutatis mutandis*, to that Sub-Category; and
- (iii) the Contribution shall be paid in respect of each portion of the Applicable Systems by means of which the call is conveyed, where "portion" means a part of the Applicable Systems between a Network Termination Point interfacing with a customer and a point at which the Applicable Systems are connected to the Operator's system.

13.5A.5 (a) Where and to the extent that the Director considers that it is necessary, in order to enable a person wishing to enter a particular market for the provision of telecommunication services to do so, or to enable a person engaged in such a market to establish or maintain a presence in that market, to reduce the contribution that person makes to the Access Deficit, in determining charges payable to the Licensee by the Operator, the Director may, if he considers it appropriate to do so, make a determination under this paragraph. Such determination may provide that the Operator shall before 1 July 1997 make no or only a partial contribution to the Access Deficit in respect of its first 10 per cent. of market share, provided that such a determination shall secure that the Licensee receives a full contribution to its Access Deficit:

- (i) in respect of all calls conveyed by the Operator's system by virtue of a choice made by a customer of the Licensee using equal access either by pre-selection or on a call-by-call basis (as described in paragraphs (i) and (ii) of Condition 13A.5 (a)); or
- (ii) if the Licensee's market share is less than 85 per cent., on the market share of the Operator and other Operators (taken together) which is in excess of 15 per cent. of the total market.

In calculating the contribution to the Access Deficit payable in respect of an Operator's international calls, it shall be assumed that the proportions in which incoming international calls conveyed by that Operator's system are distributed between those on which a full contribution is to be paid pursuant to paragraph 13.5A.5 (a) (i) and those in respect of which no or only a partial contribution is to be paid is the same as the distribution of outgoing international calls between those two classes.

- (b) Where the Director makes a determination in accordance with paragraph 13.5A.5 (a) he may also determine that the Operator shall pay to the Licensee such additional contributions to the Access Deficit in relation to any part of the Operator's market share which is in

excess of 10 per cent. as he considers appropriate (provided that the total contribution payable by the Operator shall not exceed the amount which would represent a full contribution on the whole of the Operator's market share) and he shall determine that, in the event that the Operator achieves a market share of 25 per cent. or more, the Operator shall thereafter pay to the Licensee in such manner as the Director may determine full contributions to the Access Deficit on the basis set out in paragraph 13.5A.4 and thereafter the Director's determination under paragraph 13.5A.5 (a) shall cease to apply.

(c) For the purposes of paragraph 13.5A.5 (a) and (b):

(i) in calculating whether an Operator's market share is in excess of 10 per cent., no account shall be taken of:

(A) calls which have originated with the customer of another system (other than the Applicable Systems) using that system before being conveyed by the Operator's system; or

(B) calls of the type referred to in paragraph 13.5A.5 (a) (i);

but such calls shall be brought into account in calculating whether that Operator's market share exceeds 25 per cent. or whether its market share, when taken with the market shares of any other Operators, exceeds 15 per cent.;

(ii) in relation to calls of the kind referred to in paragraph 13.5A.5 (c) (i) (A) the Director may exercise the power conferred on him by paragraph 13.5A.5 (a) (whether or not the Operator's market share is in excess of 10 per cent.) unless the operator of the system on which the call originated is an operator (not being a person of the kind referred to in paragraph 13.5A.5 (f)) who has a market share in excess of 10 per cent.; and

(iii) in calculating the contribution to the Access Deficit payable on an Operator's market share which is in excess of 10 per cent. the proportions of calls assumed to be conveyed over one and two portions respectively of the Applicable Systems (as defined in proviso (iii) to paragraph 13.5A.4) or to possess any other attribute relevant to the calculation of the contribution to the Access Deficit shall be the same as the respective proportions of the total calls possessing that attribute.

(d) For the purposes of this paragraph 13.5A.5 the Director shall be entitled to define the market segments (whether by reference to geographical area, category of call or otherwise) by reference to which the market shares referred to in this paragraph are to be calculated and different market segments may be defined for the purposes of the charges payable by different Operators but in respect of any Operator the Director shall define markets:

- (i) so that the maximum size of that Operator's market is the geographical area in which the Operator is authorised by a Licence to run the Relevant Connectable System concerned; and
- (ii) by reference only to those services which that Operator may lawfully provide by virtue of that Licence.

Shares of markets shall be determined by reference to retail call revenues. In determining shares of markets, revenues of service providers shall be attributed to the Operator who bills, or would reasonably be expected to bill, the service providers.

- (e) A determination may be made under paragraph 13.5A.5 (a), if, and to the extent that, the Director concludes it is necessary to do so in view of:
 - (i) the extent to which the Operator's average volume of call minutes per line differs, or is expected to differ, from that of the Licensee;
 - (ii) the need to ensure that any such determination does not reduce the incentive on the Operator to exercise diligence in developing the services which he is authorised to provide;
 - (iii) the availability of number portability;
 - (iv) the extent of economies of scale achieved and, in the opinion of the Director, to be expected to be achieved, by the Operator and other Operators;
 - (v) the effect of the telecommunications activities of the Operators referred to in paragraph 13.5A.5 (e) (iv) on the economies of scale of the Licensee; and
 - (vi) the provisions concerning the charges payable to the Licensee of any existing determinations by the Director, or agreements to which the Licensee is a party, (whether or not the Operator in respect of whom the determination under Condition 13.5A.5 (a) is to be made is also a party to any of the first mentioned determinations or to any of the agreements) for the conveyance by the Licensee of calls originating on systems run by other Operators and the existence of profitable Operators of such systems.
- (f) Notwithstanding any other provision of this Licence the Director shall be entitled to determine that any persons to whom cellular licences (including personal communication network licences) were granted under section 7 and 8 of the Act on or before 31 July 1991 (but including any such licences granted to the same licensee in

substitution for those licences after that date) shall, in relation to Land Mobile Radio Services (as defined in Condition 18) provided under that licence, make no or only a partial contribution to the Access Deficit, and in making any determination pursuant to this paragraph 13.5A.5 (f) the Director shall have regard in particular to:

- (i) the relationship between the charges and costs of such cellular licensees;
- (ii) the considerations of fair competition based on the relationship between the respective call charges of cellular and fixed link operators including the Licensee.

For the avoidance of doubt, the Director shall be entitled to make a determination under this paragraph 13.5A.5 (f) irrespective of the market share achieved by the cellular licensee concerned.

- (g) Notwithstanding any other provision of this Licence the Director may determine that any contribution from any Operator to the Access Deficit shall be modified or further modified to the extent that the Director considers appropriate to reflect the extent, if any, to which the Licensee has not availed itself, at any time after 31 July 1991, of its freedom to rebalance charges in a way which would reduce the amount of the Access Deficit within the constraint affecting that freedom contained in Condition 17A.2 (b).
- (h) Where the Licensee has entered into an agreement with any other Operator under paragraph 13.1 which was entered into or remains in force on or after the date on which this paragraph 13.5A comes into force, which does not in the opinion of the Director provide for a full contribution to the Access Deficit, and the Director determines that in consequence the total amount of the Access Deficit in respect of which other Operators are or may be required to make contributions is proportionately greater, the Director may, notwithstanding any other provision, of this Licence, if he considers it appropriate to do so, modify the contribution to the Access Deficit payable by an Operator to the extent necessary to ensure that that Operator does not pay a greater contribution than he otherwise would as a result of that agreement.
- (i) Before making a determination pursuant to paragraph 13.5A.5, the Director will consult with the Licensee and the Operator. If he concludes that a determination is appropriate he shall notify the Licensee and the Operator of the proposed determination and, if any, the proposed contribution and his reasons for making it and give them a reasonable opportunity to make representations.
- (j) On request from time to time by the Licensee or the Operator the Director may, if he considers it appropriate, determine to review any determination made under paragraph 13.5A.5 and determine whether

the nil or partial contribution payable by the Operator should be varied, and the provisions of paragraph 13.5A.5 shall apply *mutatis mutandis* to such review. Any agreement entered into pursuant to a determination under paragraph 13.5A.5 shall include provision for revision pursuant to a determination under this paragraph 13.5A.5 (j).

13.5A.6 Any determination under paragraph 13.5A.5 shall require arrangements to be made between the Licensee and the Operator so that the Licensee receives, without undue delay, such information as is necessary for the purpose of calculating the charges payable by the Operator to the Licensee.

13.5A.8 In this paragraph 13.5A:

“Applicable Rate of Return” means the single rate of return which is notified by the Director from time to time to the Licensee as reasonable for the Systems Business;

“audited FRBS figures” and “FRBS figures” mean figures in the FRBS Statement furnished and, in respect of the financial year ending on 31 March 1992 and thereafter, reported on by the Licensee’s auditors, in accordance with Condition 52.3;

“Message” and “call” refer respectively to Messages and calls the conveyance of which involves the provision of voice frequency switched services including (without limitation) voice and data Messages and calls (or equivalent digital services);

“Ordinary Maintenance” has the meaning given to it in Condition 24A.14;

“Sub-Category” means a sub-category which corresponds to one or more items contained in the Licensee’s price list that specify prices for calls; and

the definition of “cost” set out in paragraph (g) of Part 1 of Schedule 1 shall not apply.

13.5B.1 Where in pursuance of such an application as is referred to in paragraph 13.5 the Director determines any charge or the means of calculating any charge, the determination shall include terms and conditions which appear to the Director reasonably necessary (but no more than reasonably necessary) to secure that any charge payable by the Licensee to the Operator in respect of the conveyance of any message shall cover:

- (a) the Operator’s fully allocated costs of the conveyance calculated on a historic cost basis, including a full contribution to relevant overheads, calculated on the basis of information supplied by the Operator drawn from audited figures relating to the relevant services for the latest financial year ending before the period in relation to which the charge is to be payable (provided that the Director may determine whether those fully allocated costs including those relevant overheads and relevant costs of capital incurred in prior years and the current year

should be wholly attributed in the current year or deferred and carried forward, in whole or in part, to be attributed in future years); and

- (b) a reasonable rate of return on attributable assets applied to the relevant capital employed.

13.5B.1A (a) For the purposes of calculating the charge (or the means of calculating that charge) for a service provided by the Operator to the Licensee referred to in paragraph 13.5B.1 for a financial year in respect of which the charge is payable which commences on or after 1 April 1995 ("the relevant financial year"), the calculations shall be made on the basis of the audited figures relating to that service for the financial year immediately preceding the relevant financial year or, if those figures are not available, the most recent audited figures which are available or, if no audited figures are available the best information available to the Director (the "Interim Charge"). As soon as reasonably practicable after the end of the relevant financial year the calculations of the charge for that service shall be recalculated and redetermined on the basis of the audited figures relating to that service for the relevant financial year or, if those figures are not available, the most recent audited figures which are available or, if no audited figures are available, the best information available to the Director (the "Final Charge"). That recalculation and redetermination shall include a provision that where the Interim Charge and the Final Charge differ, the Operator shall offer to include in the agreement with the Licensee for the provision of that service terms (that offer not to be conditional on the acceptance by the Licensee of the inclusion in that agreement of any other terms and conditions whether relating to the charge (or the means of calculating that charge for that service)) which provide that:

- (i) if the Interim Charge is greater than the Final Charge, the Operator shall pay to the Licensee the amount of the difference together with interest calculated in accordance with sub-paragraph (b); and
 - (ii) if the Interim Charge is less than the Final Charge, the Licensee shall pay to the Operator the amount of the difference together with interest calculated in accordance with sub-paragraph (b).
- (b) A recalculation and redetermination of charges as described in sub-paragraph (a) shall include a provision requiring the Operator to offer to include in the agreement with the Licensee for the provision of that service terms which provide for interest to be added to any payment to be made in accordance with sub-paragraph (a), calculated from the date on which the relevant payment was due to the date on which payment is made, both dates inclusive. The applicable annual percentage rate shall be the rate specified in paragraph 13.5A.3B (b).

13.5B.2 The following provisions of paragraph 13.5B apply in respect of any period in which a Contribution is payable by the Operator (being a Local Fixed

Link Public Telecommunications Operator) by virtue of a determination made under paragraph 13.5A.

- 13.5B.3 A determination made in accordance with paragraph 13.5B.1 may provide that in addition to any charge referred to in that paragraph, the Licensee shall pay a contribution towards the access deficit of the Operator ("the Payment"). The Payment shall be expressed as an amount per minute and calculated in accordance with paragraphs 13.5B.5 and 6. No Payment shall be payable in any period after 7 February 1996.
- 13.5B.4 When determining the amount of any Payment in accordance with paragraphs 13.5B.5 and 6 the Director shall have full regard to the objective that competition from the Operator should only be established and sustained as a result of such Payment if the Operator's business is carried on with reasonable efficiency.
- 13.5B.5 In respect of any period which is more than three years after the date on which the Operator first provided voice telephony services in pursuance of an authorisation contained in or made under his licence, the amount of the Payment shall not exceed the weighted arithmetical average amount per minute by way of Contribution (excluding any Contribution made pursuant to paragraph 13.5A.5 (a) (i)) payable to the Licensee by the Operator by virtue of a determination made under paragraph 13.5A. That amount shall be reduced in inverse proportion according to the relationship which the respective volumes of different categories of calls originated on lines forming part of the Operator's system bear to the volumes of those respective categories of calls originated on Exchange Lines in the financial year the figures for which are used for the purposes of the calculations specified in paragraph 13.5A.4. The Payment shall be calculated according to the following formula, and in the event of any conflict between the formula and the preceding sentence of this paragraph 13.5B.5, the formula shall prevail:

$$P = C \times \frac{V_L}{V_o}$$

Where:

- P = one of P₁, P₂ and P₃;
- P₁, P₂, P₃ = the Payment per minute in respect of each of the categories (local, national and international) of call referred to in paragraph 13.5A, but not the fourth category;
- C = the Contribution for each such category of call as calculated pursuant to paragraph 13.5A (as qualified by paragraph 13.5B.5);
- V_L = the weighted average total annual minutes of calls per Exchange Line calculated as set out below; and

V_o = the weighted average total annual minutes of calls per line of the Operator system, calculated as set out below;

provided that where the Director has divided a category of call used for the purposes of assessing the Contribution under paragraph 13.5A.4 into Sub-Categories, the Payment under this paragraph 13.5B.5 shall be calculated separately for each such Sub-Category on the basis of the formula for that category applied, *mutatis mutandis*, to that Sub-Category.

The weighted average total annual minutes of calls shall be calculated as follows:

(a) in respect of the Applicable Systems:

$$V_L = \frac{M_1 C_1 + M_2 C_2 + M_3 C_3}{X_L}$$

(b) in respect of the Operator's systems:

$$V_o = \frac{N_1 C_1 + N_2 C_2 + N_3 C_3}{X_o}$$

Where:

M_1, M_2, M_3 = the total annual minutes for each category of call originated on Exchange Lines;

N_1, N_2, N_3 = the total annual minutes for each category of call originated on lines of the Operator's System;

C_1, C_2, C_3 = the Contribution in respect of each category of call as defined above;

X_L = the average number of lines forming part of the Applicable Systems during the financial year the figures for which are used for the purpose of the calculations made under paragraph 13.5A.4;

X_o = the average number of lines forming part of the Operator's systems during the relevant financial year, being the financial year the figures for which are used for the purposes of the calculations made under paragraph 13.5A.4.

13.5B.6 In respect of any period which is less than three years after the date on which the Operator first provided voice telephony services, as referred to in paragraph 13.5B.5, the Payment shall be such amount per minute (subject to the following provisions) as the Director considers appropriate, but:

- (a) the amount in respect of any category of call shall, before subparagraph (b) below is applied, be no greater than the Contribution payable to the Licensee by the Operator in respect of calls of that category by virtue of a determination made under paragraph 13.5A; and
- (b) the amount shall be proportionately reduced, where appropriate, to take account of the likely average volume per line of minutes of calls in each category which is likely to be generated by or otherwise attributable to the Operator's customers and prospective customers compared with the average volume per line of minutes of calls in each category likely to be generated by or otherwise attributable to the Licensee's customers for the whole of the Licensed Area.

13.5B.7 Where the Director proposes to make a determination under this paragraph 13.5B he shall notify the Licensee, the Operator and any other person the Director considers appropriate ("the Interested Parties") of his proposed determination and invite each Interested Party within a reasonable time, being at least 28 days, to present its views to the Director. In relation to each of the views expressed by an Interested Party, he shall notify that Interested Party of his conclusions.

13.5B.8 In this paragraph 13.5B:

"access deficit", in relation to an Operator, means the excess of costs over revenues equivalent to those referred to in relation to the Access Deficit;

"Local Fixed Link Public Telecommunications Operator" means a Public Telecommunications Operator who:

- (a) is authorised by or under his licence (however expressed and whether or not limited in any way) to provide voice telephony services to any person;
- (b) provides such services by means of a line; and
- (c) is not authorised to provide a Land Mobile Radio Service;

"Land Mobile Radio Service" means any telecommunication service provided by means of wireless telegraphy where every Message that is conveyed has been, or is to be, conveyed by means of apparatus which is or is to be used while in motion;

"line" means:

- (a) in the case of the Applicable Systems, an Exchange Line;

(b) in the case of the systems of Mercury Communications Limited a Direct Service Line as defined in its licence dated 5 November 1984; and

(c) in the case of any other Operator, telecommunication apparatus forming part of the Operator's system which is equivalent to an Exchange Line;

"Message" and "call" have the meanings given to them in paragraph 13.5A.8; and

"Sub-Category" has the meaning given in paragraph 13.5A.8.

13.5C Where in pursuance of such an application as is referred to in paragraph 13.5 the Director determines any charge (or the means of calculating any charge) payable in respect of the establishment of a connection between the Applicable Systems and the system of the Operator he shall do so in accordance with the following provisions.

13.5C.1 Any costs incurred in the establishment of such a connection, including (without limitation) the provision of dedicated capacity at a point (a "point of connection") at which the Applicable Systems and the Operator's system are connected, but not transmission capacity, shall be shared between the parties according to the proportions in which each of them will bill the customers originating calls which are to be conveyed over the point of connection. The proportions shall be derived from forecasts by each party of the capacity required to convey those calls for which the respective parties will bill customers originating them. These costs shall be assessed on the basis of:

- (a) the Licensee's or the Operator's respective fully allocated costs of the establishment of the connection including a reasonable contribution to relevant overheads (provided that the Director may determine whether those fully allocated costs including those relevant overheads and relevant costs of capital incurred in prior years and the current year should be wholly attributed in the current year or deferred and carried forward, in whole or in part, to be attributed in future years); and
- (b) the application to relevant capital employed of (in the case of the Licensee's costs) the Applicable Rate of Return or (in the case of the Operator's costs) a reasonable rate of return on attributable assets;

Provided that where the charge is payable in respect of a financial year which commences on or after 1 April 1995 ("the relevant financial year") the costs shall be assessed on the basis of:

(aa) in the case of the Licensee:

- (i) the fully allocated costs of the establishment of the connection including a reasonable contribution to relevant overheads

calculated on the basis of information supplied by the Licensee drawn from the audited information appearing by virtue of Condition 20B.4 (b) (i) in the Licensee's Financial Statement for the relevant Business for the relevant financial year (provided that the Director may determine whether those fully allocated costs including those relevant overheads and relevant costs of capital incurred in prior years and the current year should be wholly attributed in the current year or deferred and carried forward, in whole or in part, to be attributed in future years); and

- (ii) the Applicable Rate of Return applied to the relevant capital employed; and

(bb) in the case of the Operator:

- (i) the fully allocated costs of the establishment of the connection including a reasonable contribution to relevant overheads calculated on the basis of information supplied by the Operator drawn from audited figures relating to the relevant service for the relevant financial year or, if those figures are not available, the most recent audited figures which are available or, if no audited figures are available, the best information available to the Director (provided that the Director may determine whether those fully allocated costs including those relevant overheads and relevant costs of capital incurred in prior years and the current year should be wholly attributed in the current year or deferred and carried forward, in whole or in part, to be attributed in future years); and
- (ii) a reasonable rate of return on attributable assets applied to the relevant capital employed.

13.5C.2 Any determination of any charge (or the means of calculating the same) to be payable under paragraph 1 above may include a provision that no such charge shall be payable where the party imposing the charge fails to provide the connection within six months (or such longer period as the Licensee and the Operator may agree) of the date of the request therefor, provided that this provision shall not apply in any particular case unless it is reasonable in all the circumstances for it to apply. It shall be deemed not to be reasonable if:

- (a) it was not reasonably practicable for any reason for the first party to provide the connection in time;
- (b) the other party's request for the connection was unreasonable in quantum having regard to its current and future needs; or
- (c) in order to comply with the time period the Licensee would have had to give priority to making the connection beyond that given to its own customers generally.

- 13.5C.3 The period referred to in paragraph 2 shall be extended by such period as equates to or, if there is no period that equates, as is reasonably commensurate with, delays attributable to any default or lack of co-operation by the Operator, or to force majeure of any kind.
- 13.5C.4 Where one party has in pursuance of a provision in the agreement required the other party to provide a connection and subsequently cancels the order, it shall reimburse the other party for all costs (assessed on the basis of that party's fully allocated costs together with, in the case of the Licensee's costs, the Applicable Rate of Return and, in the case of the Operator's costs, a reasonable rate of return on attributable assets) incurred by the other party in the provision of the connection up to the date of cancellation.
- 13.5C.5 In this paragraph, "Applicable Rate of Return" has the meaning given to it in paragraph 13.5A.
- 13.5C.6 (a) For the purposes of calculating the charge (or the means of calculating that charge) for a Standard Service (other than a Competitive Standard Service) payable in respect of the financial year ending on 31 March 1996 or any subsequent financial year in accordance with paragraph 13.5C.1 or 13.5E, the calculations shall be made on the basis of:
- (i) in the case of the financial year ending on 31 March 1996, the Financial Statement for the relevant Business for the financial year ending on 31 March 1995; and
 - (ii) in the case of subsequent financial years the audited information appearing by virtue of Condition 20B.4 (b) (i) in the Licensee's Financial Statement for the relevant Business for the financial year immediately preceding the financial year in question;

or if, at any time when this paragraph is to be applied, that Financial Statement is not available, on the basis of the Financial Statement of the relevant Business for the financial year two years immediately preceding the financial year in respect of which the charge is payable or, if that is not available, on the best information available to the Director (the "Interim Charge"). As soon as reasonably practicable after the end of the financial year in respect of which the charge is payable commencing with the financial year ending 31 March 1996 the Director shall recalculate and redetermine the charge on the basis of the audited information appearing by virtue of Condition 20B.4 (b) (i) in the Licensee's Financial Statement for the relevant Business for the financial year in respect of which the charge is payable (the "Final Charge"). That recalculation and redetermination shall include a provision that where the Interim Charge and the Final Charge differ, the Licensee shall offer to include in the agreement with the Operator for the provision of that Standard Service terms (that offer not to be conditional on the acceptance by that Operator of the inclusion in that agreement of any other terms and conditions whether relating to the

charge (or the means of calculating that charge for that Standard Service)) which provide that:

- (i) if the Interim Charge is greater than the Final Charge, the Licensee shall pay to the Operator the amount of the difference together with interest calculated in accordance with sub-paragraph (b); and
- (ii) if the Interim Charge is less than the Final Charge, the Operator shall pay to the Licensee the amount of the difference together with interest calculated in accordance with sub-paragraph (b);

provided that:

- (aa) where the charge for that Standard Service paid by an Operator to the Licensee pending the recalculation and redetermination of the charge in accordance with this paragraph (the "Actual Charge") is less than the Interim Charge (whether as a result of the operation of Condition 24F or in circumstances where the Director has consented to that lesser charge pursuant to Condition 16B.5), the Final Charge shall be whichever is the lower of the Actual Charge and what would have been the Final Charge but for the operation of this proviso; and
 - (bb) any payment to be made in accordance with this paragraph shall be adjusted to take account of any revision of the charge (or the means of calculating that charge) pursuant to either of Conditions 24F.11 and 24F.14.
- (b) A recalculation and redetermination of charges as described in sub-paragraph (a) shall include a provision requiring the Licensee to offer to include in the agreement with the Operator for the provision of that Standard Service terms which provide for interest to be added to any payment calculated in accordance with paragraph 13.5A.3B (b).
 - (c) For the purposes of calculating the charge (or the means of calculating that charge) for a service provided by the Operator to the Licensee referred to in paragraph 13.5C.1, the calculations shall be made in the same manner as the calculations made in accordance with paragraph 13.5B.1A.

13.5D Where the Director determines any charges or the means of calculating any charges, he may, in addition to the other powers conferred on him by this Condition 13:

- (a) adjust the Contribution (which apart from such adjustment would be payable by the Operator to the Licensee towards the latter's Access Deficit) so that the Operator pays, in relation to any category of call, a Contribution to the financing of the Licensee's Access Deficit no greater than the average amount the Licensee would charge as a

contribution to the financing of the Licensee's Access Deficit if the Operator's customers for such calls had made them (so far as conveyance by any public telecommunication system is concerned) wholly by means of the Applicable Systems taking advantage of all appropriate discounts which the Licensee makes available to its customers; and

- (b) incoming international calls which are first conveyed within the United Kingdom on the Operator's System (as distinct from any of the Applicable Systems), adjust the Contribution (as described in sub-paragraph (a) above) so as to take account of any discounts (or matters having the effect of such discounts) made available by the Licensee in charging certain of its customers for outgoing international calls, where such discounts (or such other matters) have the effect that any losses the Licensee may make on outgoing international calls made by customers qualifying for the discount are funded by profits on incoming international calls. Any such adjustment made by the Director shall be for the purpose set out in sub-paragraph (a), that is to say, for the purpose of ensuring that the Operator pays in relation to any incoming international calls, a Contribution no greater than the average of the amounts which the Licensee might appropriately apply as contributions to the financing of its Access Deficit if the Operator's customers had made all their outgoing international calls (so far as conveyance by any public telecommunication system is concerned) wholly by means of the Applicable Systems taking advantage of all appropriate discounts which the Licensee makes available to its customers and if the corresponding incoming international calls had been first conveyed within the United Kingdom on any of the Applicable Systems (as distinct from the Operator's system).

The discounts (or other matters) referred to in sub-paragraphs (a) and (b) above are those which fall within the publication requirements of Condition 16.

- 13.5E Where in pursuance of such an application as is referred to in paragraph 13.5 the Director determines any charge (or means of calculating that charge) payable in respect of the provision of a service other than a service the charge (or the means of calculating that charge) payable in respect of which falls to be determined in accordance with paragraph 13.5A or paragraph 13.5C he shall do so in accordance with paragraph 13.5C.6.
- 13.5F Before making an adjustment pursuant to paragraph 13.5D, the Director shall consult with the Licensee and the Operator. If he concludes that an adjustment is appropriate, he shall notify the Licensee and Operator of the proposed adjustment and his reasons for making it and give them a reasonable opportunity to make representations. For the avoidance of doubt, in deciding whether and to what extent to exercise the power conferred on him by paragraph 13.5A.5 the Director shall take account of the extent (if any) to which adjustments provided for by paragraph 13.5D have been made at that time or are appropriate to be made.

13.5G Without prejudice to paragraph 13.5A.3B or Condition 16B, with effect from 8 February 1996 and notwithstanding any agreement entered into by the Licensee or determination made under Condition 13, the Licensee shall not recover from an Operator (nor will any determination made before that date oblige an Operator to pay) any Contribution in relation to any period commencing on or after 8 February 1996 and if an Operator has, immediately before that date, been under an obligation to pay a Contribution, the Licensee shall reduce the relevant charge or charges payable by the Operator to the Licensee by the amount of the Contribution.

13.6 Where the Licensee is required to enter into an agreement to do anything under paragraph 13.1 (b) the permitted terms and conditions may relate to all or any of the matters mentioned in paragraph 13.4 but in determining the terms and conditions, in the event of a failure to agree, under paragraph 13.5 the Director shall have regard to (in addition to the matters specified in paragraph 13.5) the need to ensure:

- (a) that, insofar as any freedom of choice is conferred upon persons running telecommunication systems connected to the Operator's system as to the extent to which Messages are conveyed by means of the Applicable Systems and in routing messages so conveyed, a corresponding freedom of choice is conferred so far as reasonably practicable on persons running telecommunication systems connected to the Licensee's system;
- (b) that the requirements of fair competition, including the need for those to whom telecommunication services are provided to have a reasonable means of learning by whom the Messages sent by them are conveyed, are satisfied;

but paragraph 13.5 shall have effect for this purpose with the omission of sub-paragraph (f) (iv).

13.7 The Licensee shall not be obliged to enter into any agreement under paragraph 13.1 if he refuses to do so, giving his reasons in writing to the Operator and to the Director, and the Director determines that those reasons are proper ones having regard to the matters mentioned in paragraphs 13.5 and 13.6.

13.8 Where:

- (a) an agreement has been entered into under paragraph 13.1 but for any reason (whether breach of that agreement or otherwise) anything which the Licensee is required to do under the agreement is not being done;
- (b) the Director considers that the thing ought to be done in order to ensure that a connection made pursuant to that agreement is maintained or that a connection is established pursuant to that

agreement and that Messages are conveyed by means of the connection in accordance with the agreement; and

- (c) the Director is satisfied that the Operator is not able satisfactorily to enforce the agreement so that that thing is done within such time as the Director considers necessary;

then, if the Director so directs, the Licensee shall do that thing subject to such conditions as the Director determines to be reasonable in the circumstances, having regard, in particular, to the permitted terms and conditions which apply and to any thing which he may reasonably require the Operator to do in order to mitigate the effects of the Licensee's failure to do the thing which he is required to do.

13.8A.1 This paragraph 13.8A applies where:

- (a) an Operator establishes a prima facie case that the Licensee is unreasonably not performing an obligation which he is required to perform under an agreement entered into under paragraph 13.1;
- (b) the Director considers that:
 - (i) the obligation ought to be performed in order to achieve the purposes of paragraph 13.1;
 - (ii) the Operator is not able satisfactorily to enforce the agreement so that the obligation is performed within such time as the Director considers necessary and the balance of convenience requires the Director to take action under this paragraph rather than leave it to the Courts; and
 - (iii) the Operator has performed all its obligations which are relevant to the Licensee's obligation that is allegedly not being performed; and
- (c) paragraph 13.8 does not apply.

13.8A.2 Where this paragraph 13.8A applies the Director may require the Licensee to perform the obligation subject to such conditions as are reasonable in the circumstances having regard, in particular, to the permitted terms and conditions which apply and to anything which the Operator may reasonably be expected to do in order to mitigate the effects of the Licensee's failure to perform its obligation.

13.8A.3 Before making a requirement under paragraph 13.8A.2 the Director shall notify the Licensee of the prima facie case established by the Operator, his conclusions thereon, and on the matters referred to in paragraph 13.8A.1 (b) and the direction he proposes to make. The Licensee shall be afforded adequate time in which to make representations.

13.8B.1 Notwithstanding, and without prejudice to, any of the foregoing provisions of this Condition, if the Director considers that there is likely to be a category comprising a sufficient number of Operators seeking determinations under paragraph 13.5 for whom standard terms and conditions would be appropriate, he may require the Licensee to publish standard provisions (including, without limitation, charges or the method for calculating them) which set out the terms on which the Licensee will enter into an agreement under paragraph 13.1 with Operators of that particular category.

13.8B.2 If on an application by an Operator in that category the Director is satisfied that the Operator has established a prima facie case that any such standard term or condition proposed by the Licensee is unreasonable and that the Licensee has acted unreasonably in relation to negotiations on that term or condition, the Director may, if he considers it necessary to do so, either determine that the Licensee shall modify that standard provision in such a way as to make the term reasonable in the agreement with the Operator, or modify that standard provision in such a way in the provisions published under paragraph 13.8B.1.

In applying this paragraph 13.8B.2:

- (a) any such standard provision shall be confined to the subject matter of the term or condition proposed by the Licensee except that, where the Director considers that a term or condition is essential in relation to subject matter not covered by any term or condition proposed by the Licensee, he may determine a term or condition to cover the subject matter;
- (b) the Licensee shall not be deemed to have acted unreasonably merely by virtue of having proposed the term or condition in question; and
- (c) no determination may be made in relation to any provision which would be subject to the Unfair Contract Terms Act 1977.

13.8B.3 Before making a determination under paragraph 13.8B.2 the Director shall notify to the Licensee and the Operator the grounds of the Operator's application and his conclusions thereon and the modification he proposes to make or require the Licensee to make, and shall afford the Licensee and the Operator adequate time, being not less than 28 days, in which to make representations.

13.8B.4 Where an Operator makes an application to the Director under paragraph 13.5, the Director may treat the application as an application under paragraph 13.8B.2 above and act accordingly.

13.8B.5 For the avoidance of doubt the provisions of paragraphs 13.5, 13.5A, 13.5B and 13.5C shall apply in respect of any determination made under this paragraph as they apply in relation to a determination made under paragraph 13.5.

13.9 In this Condition:

“Business” has the meaning given to it in Condition 20B;

“Competitive Standard Service” has the meaning given to it in Condition 16B;

“Confidential Information” has the meaning given to it in Condition 41A;

“Connectable System” means a telecommunication system which is authorised to be run under a Licence which authorises connection of that system to any of the Applicable Systems;

“Connection Service” means a telecommunication service consisting in the conveyance of any Message which has been, or is to be, conveyed by means of any of the Applicable Systems;

“Financial Statement” has the meaning given to it in Condition 20B;

“Initial Standard Service” has the meaning given to it in Condition 16B;

“Long Line Public Telecommunications Operator” means a public telecommunications operator who is authorised by a Licence to provide telecommunication services consisting in the conveyance of Messages by fixed links run by him over distances greater than 50 linear kilometres;

“Quality” has the meaning given to it in Condition 17B;

“Relevant Connectable System” means a Connectable System which is authorised to be run under a Licence which authorises the provision by means of that System of Connection Services for reward to the public, or any class of the public, not being a system:

- (i) authorised to be run under a Licence granted to all persons or persons of any class; and
- (ii) for the connection of which, and for the provision of matters necessary for such connection, the Licensee offers standard terms and conditions which satisfy the requirements of Condition 16;

and not being a system which the Director has determined ought not to be deemed to be a Relevant Connectable System for the purposes of this Condition; and

“Standard Service” has the meaning given to it in Condition 16B.

13.10 This Condition operates without prejudice to Condition 19 (access charges) but due account shall be taken for the purposes of this Condition of any charge imposed on the Operator for the purposes of that Condition.